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Security Council

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Provisional

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Tuesday, 8 November 1994, 3.35 p.m.

New York

President:	Mrs. Albright	(United States of America)
Members:	Argentina	Ms. Cañas
	Brazil	Mr. Sardenberg
	China	Mr. Li Zhaoxing
	Czech Republic	Mr. Kovanda
	Djibouti	Mr. Dorani
	France	Mr. Mérimée
	New Zealand	Mr. Keating
	Nigeria	Mr. Gambari
	Oman	Mr. Al-Khussaiby
	Pakistan	Mr. Marker
	Russian Federation	Mr. Lavrov
	Rwanda	Mr. Bakuramutsa
	Spain	Mr. Yañez-Barnuevo
	United Kingdom of Great Britain and Northern Ireland	Sir David Hannay

Agenda

The situation concerning Rwanda

Establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States

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The meeting was called to order at 3.35 p.m.

Adoption of the agenda

The agenda was adopted.

The situation concerning Rwanda

Establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States

The President: The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have the following documents before them: S/1994/879, report of the Secretary-General on the establishment of the Commission of Experts pursuant to paragraph 1 of Security Council resolution 935 (1994); and S/1994/906, letter dated 29 July 1994 from the Secretary-General addressed to the President of the Security Council. Members of the Security Council also have before them document S/1994/1168, which contains the text of a draft resolution submitted by Argentina, France, New Zealand, the Russian Federation, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

I should like to draw the attention of the members of the Council to the following other documents: S/1994/1115, letter dated 28 September 1994 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council; S/1994/1125, letter dated 1 October 1994 from the Secretary-General addressed to the President of the Security Council, transmitting the preliminary report of the independent Commission of Experts established in accordance with Security Council resolution 935 (1994); S/1994/1157, note by the Secretary-General transmitting the reports of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda; and S/1994/1230, letter dated 31 October 1994 from the Chargé d'affaires *ad interim* of the Permanent Mission of Uganda to the United Nations addressed to the President of the Security Council.

It is my understanding that the Council is ready to proceed to vote on the draft resolution before it. Unless I hear any objection, I shall put the draft resolution to the vote.

There being no objection, it is so decided.

I shall first call on those members of the Council who wish to make statements before the voting.

Mr. Lavrov (Russian Federation) (*interpretation from Russian*): The Russian Federation became one of the sponsors of the draft resolution on this question because of the fact that such a decision was both a final and a just settlement of the crisis in Rwanda and in support for international peace and security as a whole. It should also be noted that in the course of work on the draft resolution and on the statutes of the tribunal, the sponsors, without detriment to the fundamental principles of the establishment and activity of the international tribunal, accommodated to as great an extent as possible the wishes of the Government of Rwanda and of the States members of the Movement of the Non-Aligned Countries which are members of the Security Council.

Rwanda is continuing to experience a human tragedy of unprecedented scale. In that country, mass and glaring violations of international humanitarian law have been perpetrated, including acts of genocide and crimes against humanity, as a result of which hundreds of thousands of people have perished. Clearly, those responsible for these crimes must receive the punishment they deserve — and this is the major, but not the sole, task of the international tribunal which is to be created.

The Russian Federation also believes that by its activity the tribunal must promote the process of national reconciliation, the return of refugees, and the restoration and maintenance of peace in Rwanda. We hope that the leadership of the country will react positively to the establishment of the tribunal and will actively cooperate with it in order to bring to justice all of the offenders and those guilty of violating the norms of international humanitarian law in Rwanda. In addition, we believe that support for the Security Council resolution will give yet another clear and unequivocal signal to the effect that the international community will not tolerate serious violations of norms of international humanitarian law and disregard for the rights of the individual.

In conclusion, I should like to note that the history of the establishment of international tribunals, first in the former Yugoslavia and now in Rwanda, reinforces our conviction that a permanent international criminal court

must be established in the near future. Considerable useful work has already been done in this area both in the International Law Commission and at the present session of the General Assembly. This gives us reason to hope for the successful conclusion of the efforts to establish such a body.

The President: I shall now put to the vote the draft resolution in document S/1994/1168.

A vote was taken by show of hands.

In favour:

Argentina, Brazil, Czech Republic, Djibouti, France, New Zealand, Nigeria, Oman, Pakistan, Russian Federation, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America

Against:

Rwanda

Abstaining:

China

The President: The result of the voting is as follows: 13 votes in favour, 1 against and 1 abstention.

The draft resolution has been adopted as resolution 955 (1994).

I shall now call on those members of the Council who wish to make statements following the voting.

Mr. Mérimée (France) *(interpretation from French)*: The Security Council has for the second time in its history established an international tribunal for the prosecution, judgement and punishment of persons who have engaged in acts so serious that they are repugnant to the conscience of mankind and have led those bodies that have the authority to do so to act immediately to ensure that they do not go unpunished.

The horrendous acts that were perpetrated this year on the territory of Rwanda fully justify use having been made once again of the procedure which, on the initiative of France, was applied for the first time in regard to the territory of the former Yugoslavia.

Individuals, regardless of the community to which they belong, must be brought to trial and judged if they have violated the most fundamental rules of war, if they have committed crimes against humanity and, above all, if they have orchestrated attempts to destroy all or part of an ethnic group - that is to say, genocide. These acts unquestionably fall within the jurisdiction of an international court which can forcefully and impartially see that justice is served on behalf of all mankind.

Because of their particular seriousness, the offences which fall within the competence of the Tribunal are a threat to peace and international security which justifies recourse to Chapter VII of the Charter. This solution, which is binding on all States and hence requires that they meet the requests of the Tribunal and, if necessary, adapt their domestic legislation to enable them fully to cooperate with it, has the additional merit of eliminating the possibility of any prosecution that is undertaken against suspects being in any way tinged by suspicion of vengeance or subjectivity. Thus the Tribunal should in its own way contribute to restoring civil peace to the territory of Rwanda. This consideration should be borne in mind when, after the Secretary-General's report has been received, the Tribunal's headquarters and actual method of operation are decided upon.

From the outset, the French delegation has been dedicated to the successful establishment of the Tribunal as quickly as possible, taking into account the specific needs of the situation in Rwanda as compared to the precedent in regard to the former Yugoslavia.

In particular, it is obvious that, given the very large number of perpetrators of serious offences, all of them cannot be tried by the International Tribunal. The Tribunal itself will have to determine which cases it can appropriately deal with. The other suspects will remain subject to the national jurisdiction of Rwanda or of other States.

The Tribunal will be competent to deal with offences committed between 1 January and 31 December 1994. The choice of this time period makes it possible to take into account possible acts of planning and preparation of genocide which took place beginning on 6 April this year. It also makes it possible for the Tribunal to hear cases involving serious infractions which continued to be committed after July 1994 on the territory of Rwanda and on the territory of neighbouring States - first and foremost in the refugee camps. It goes without saying that if major infractions, together with violations of humanitarian law, were repeated after the end of 1994, the Security Council would be entitled to extend the Tribunal's competence beyond the time period envisaged at present.

Concerning the structure of the Tribunal, the means envisaged are to a great extent the same as those available to the Tribunal for the former Yugoslavia, in particular concerning the Appeals Chamber and the Office of the Prosecutor. This should allow these two elements of the Tribunal to function more economically and more harmoniously. This should also allow this new jurisdiction to start work very quickly, since Judge Goldstone, who will have the initiative in undertaking prosecutions of the perpetrators of criminal acts in Rwanda, has already assumed his duties. We note with satisfaction that the statute mentions that there will be a special deputy for Rwandan affairs. This magistrate should be appointed very quickly, so that the Prosecutor's Office can have someone with sufficient knowledge of the language and the cultural context of this region of Africa.

Concerning the interpretation of certain provisions of the statute, the French delegation wishes to refer to the statement in explanation of vote which it made when resolution 827 (1993), dealing with the establishment of the Tribunal for the former Yugoslavia, was adopted. The interpretative comments made at that time remain valid for my delegation in the case now before us.

In conclusion, I hope that the judgement of such cases in the future will fall within the competence of a permanent international criminal court established by treaty. The International Law Commission has drafted the statute for this new body and it will now be up to the General Assembly and to States to take the necessary measures to ensure that this important project comes to fruition in the very near future. In our view, it is only because such a court does not exist that the Security Council has had to make use of its powers to establish a first and then a second ad hoc international tribunal. This initiative on the part of the organ entrusted with the maintenance of peace was legitimate and indispensable. It can also provide international penal experience which will be useful for the establishment of the future permanent court.

We should like to express in advance our full confidence in the judges and personnel that will be entrusted with carrying out this formidable but essential task on our behalf.

Mr. Keating (New Zealand): The decision which we have just taken is a very important one. It is also of great significance to Rwanda. But it is of even more fundamental importance to the international community as a whole. It is a decision which the Security Council is taking on behalf of all the Members of the Organization.

Genocide is the most heinous of international crimes. Article VII of the Convention on the Prevention and Punishment of the Crime of Genocide envisages action under the Charter to suppress genocide, and article VI of the Convention envisages the establishment of international tribunals to try persons charged with genocide.

The Council is therefore acting within the framework of international law when it uses its authority under the Charter to respond, as it has done, to the recommendation of the Commission of Experts that was established under resolution 935 (1994). The Council has acted quickly, but it has also acted responsibly. It has listened to all concerned and taken into account as far as possible the concerns that this Tribunal should respond to the specific needs of the situation in Rwanda.

New Zealand was pleased, after consideration of the report of the Commission of Experts, to take the lead with the United States - we were the two original sponsors - in proposing a draft resolution to establish a Tribunal that could lead to the trial and punishment of those individuals who were responsible for the genocide.

The magnitude of the crimes could not go unpunished. Between 500,000 and 1 million people may have been slain in Rwanda in a little over three months. After witnessing the genocide in Rwanda, on a scale reminiscent of that which occurred during the Second World War, we believe that the response could be no less than it was in Nuremburg or Tokyo decades ago or in respect of war crimes in the former Yugoslavia last year.

Let me recall that the preliminary report of the Commission of Experts made it absolutely clear that the genocide unleashed after the events of 6 April was the implementation of an operation

> "planned months in advance of its actual execution"

and carried out in a quite

> "concerted, planned, systematic and methodical way". (*S/1994/1125, annex, para. 44*)

The clear intention was to exterminate an entire section of the population of Rwanda.

It is therefore all the more a matter for regret that the resolution adopted today was not adopted by

consensus. We particularly regret it because during our term here on the Security Council New Zealand has pursued action that has sought to create a consistency between the international community's response to tragedy in Africa and its response to tragedy elsewhere in the world.

We recall that the Government of Rwanda requested the Tribunal. That is a fact. We are disappointed that it has not supported this resolution. We understand that this is principally because of its desire that those convicted of genocide should be executed. As a State party to the Optional Protocol to the International Covenant on Civil and Political Rights, New Zealand could never support an international tribunal that could impose the death penalty. For over three decades the United Nations has been trying progressively to eliminate the death penalty. It would be entirely unacceptable — and a dreadful step backwards — to introduce it here. Indeed, it would also go against the spirit of the Arusha Agreement, which the Government of Rwanda has said it will honour and which commit all parties in Rwanda to accept international human rights standards.

We do not believe that following the principle of "an eye for an eye" is the path to establishing a civilized society, no matter how horrendous the crimes the individuals concerned may have committed. The objective in Rwanda must be to establish a just and fair society based on respect for life and fundamental human rights.

The cycle of violence between the two communities in Rwanda must come to an end. And for that cycle to end there is a need for an international tribunal to deal with the principal perpetrators, a tribunal that will be demonstrably impartial. Only then will it be possible for all Rwandese, including those outside the country, to see that there is a guarantee that justice will be delivered fairly — that justice will, in fact, be done.

It may be that the lesser perpetrators will have to be dealt with by the Rwandan courts. This is likely because of the numbers involved. We can only say that our expectation is that in the domestic courts weight must be given to the Arusha human rights commitments. We also have to record that New Zealand could not support any proposals that would change the international character of the Tribunal or introduce any suggestion that the Tribunal could be subordinated to Rwandan political intervention.

New Zealand has worked hard with Rwanda for more than six weeks now, ever since the beginning of this initiative, in an endeavour to accommodate its concerns. Many important changes have been made to the framework of the Tribunal. We did not simply produce an add-on to the former-Yugoslavia Tribunal; the Council recognized that there are important differences between the two situations.

Moreover, the focus of the jurisdiction of the Tribunal is not on war crimes, but on genocide, as Rwanda had requested. For the killing that went on Rwanda this year, though not unconnected with the fighting between the forces of the two parties, was largely incidental to it.

Furthermore, the Tribunal will be specific to Rwanda. In this regard, the Council has included a specific reference to the possibility of imprisonment in Rwanda. The temporal jurisdiction of the Tribunal has been expanded backwards, from April, as originally proposed, to January 1994, so as to include acts of planning for the genocide that occurred in April.

Proceedings will be held in Rwanda when possible, and the number of judges and trial chambers of the Tribunal can be expanded if need be. These are further important changes that have been introduced.

It has been made absolutely clear in the statute that there can be no pardons or commutations of sentences unless the Tribunal so decides; it is therefore not open for pressure to be brought to bear to secure the pardon of persons convicted and imprisoned elsewhere.

We therefore believe that no one can say that the Security Council has not tried genuinely to accommodate Rwanda's reasonable concerns. We hope that, in the light of the changes that have been made and the concessions that have been offered, Rwanda will in turn offer its cooperation to the Tribunal, because, looking to the future, we believe that the international community will judge Rwanda by its practical willingness to cooperate with the United Nations over the trial and punishment of the perpetrators of genocide. Ordinary people the world over will not understand if the Government of Rwanda turns its back on the efforts of the United Nations to ensure that the trial and punishment of the perpetrators of genocide take place.

We believe that the guarantee of a fair and impartial trial would go some way to encouraging the millions of Rwandese now in refugee camps in neighbouring countries to return to their homeland. It has been with

deep apprehension that my delegation has witnessed the situation in those refugee camps, where the old power structures of the former government have been restored. These are the people responsible for genocide, and they are now controlling Rwandese refugees outside the country.

My delegation therefore urges Rwanda to take the opportunity to support this Tribunal, to investigate and punish these people and also as an instrument of national reconciliation.

Sir David Hannay (United Kingdom): Like the rest of the world, the Government of the United Kingdom was appalled by the atrocities committed in Rwanda. We supported the establishment by resolution 935 (1994) of the Commission of Experts entrusted with the task of investigating reports of grave violations of international humanitarian law committed in Rwanda. In its preliminary report the Commission strongly recommended the creation of an international criminal tribunal for Rwanda. It considered that prosecutions for serious crimes committed during the armed conflict would be better undertaken by an international rather than a domestic tribunal because in its view an international tribunal would best meet the objectives of independence, objectivity and impartiality. The Commission also pointed out that the gravity of the human-rights violations committed in Rwanda extended far beyond that country — they concerned the international community as a whole — and it pointed to the need for ensuring justice not only in respect of atrocities already perpetrated, but also as a matter of deterrence for the future.

It is because my Government shares these views that we cosponsored the draft resolution that the Council has just adopted. The establishment of a tribunal in these exceptional circumstances for the prosecution of those responsible for the atrocities is a signal of the international community's determination that offenders must be brought to justice. My Government regrets that Rwanda felt compelled to vote against the draft resolution. The sponsors, of whom we are one, have throughout the drafting process been very careful to listen to the views of the Government of Rwanda and have made many changes to meet them. But it was essential to maintain in the statute and in the resolution the international character of the Tribunal, and that meant that some changes sought could not be agreed without sacrificing that character. I am sure that we can expect from the Government of Rwanda the degree of cooperation that is demanded of all Member States in relation to resolutions adopted under Chapter VII.

It is our hope that the Tribunal which has just been established will prove by experience to be one which meets the objectives shared by the international community and Rwanda: that justice should be done and that thereby the communities may be reconciled.

The statute of the International Tribunal leaves open the question of where the seat of the Tribunal should be. We have noted the very strong wish of the Rwandan Government to have the Tribunal in Kigali. We look forward to having a very early report from the Secretary-General on this and other matters necessary for the speedy setting-up of the Tribunal. Looking ahead to the election of judges, it is of the greatest importance for the effective functioning of the Tribunal that the judges are persons with considerable practical experience in criminal law and procedure. It is, of course, the purpose of the Tribunal to try persons for serious criminal offences, and it is in that area that the experience of candidates for judicial office must lie.

As with resolution 827 (1993), which established the Tribunal for the prosecution of crimes in the former Yugoslavia, this resolution makes clear that all Member States will have obligations in relation to the Rwanda Tribunal. It will be necessary for States to establish their own procedures for implementing their obligations under the statute. Domestic procedures will be needed to give effect to the obligations under article 28 to comply with a request or order concerning the surrender or transfer of an accused to the International Tribunal.

We do not believe that the new Tribunal on its own will be able to take on the whole burden of prosecuting those responsible for these dreadful crimes. The international community must therefore do all it can to assist in restoring the Rwandan domestic judicial system. The Tribunal and the Rwandan courts together must help to bring the cycle of violence and counter-violence to an end.

Mr. Kovanda (Czech Republic): The Security Council has not dealt this year with developments more dramatic than those in Rwanda or with a country more tragic than Rwanda. Today, its tragedy has abated a little. The genocide is over; killings these days take place out of sight, even out of the country. And we sit here today in order to create a vehicle of justice.

The independent Commission of Experts concluded that even though the conflict in Rwanda was a domestic one its consequences affected the entire international

community, inasmuch as fundamental principles of international humanitarian law were violated. It therefore follows that the Security Council would react similarly as it did to the conflict in former Yugoslavia and initiate an ad hoc tribunal.

Our decision today carries a broader significance which I will examine only in passing, merely to point out that it might signify a breakthrough in creating mechanisms that would impose international criminal law. These mechanisms have so far been treated like a Cinderella by the codification process of international law. While new concepts of international criminal law have been developed — war crimes, crimes against humanity, genocide, and so on — rules of procedure have remained quite underdeveloped since the Nuremberg trial. In the aftermath of the Rwanda genocide, the Security Council has demonstrated that it can efficiently and rapidly create an instrument for dealing with certain international crimes — an accomplishment that has for decades been eluding international diplomatic conferences. The fact that that instrument is being created by the Security Council safeguards an essentially unified approach to these international crimes, and therefore, while recognizing all the problems associated with creating ad hoc tribunals, we welcome it.

Let us, however, remind ourselves that justice, no matter how carefully weighed out and dispensed, will not undo the tragedy. Even if all the perpetrators of the heinous crimes in Rwanda were identified, rounded up, tried and sentenced, it would not bring back to life the hundreds of thousands of their victims, it would not dispel the continuing terror in the eyes of the survivors, it would not return family love to the thousands of orphans.

Still, justice is necessary. It is especially necessary for Rwanda, which for decades has lived in a culture of impunity, a culture where massacres which have gone unpunished constitute a part of its contemporary history. The colloquial expression "getting away with murder," a vivid exaggeration of a daring exploit in the English idiom, carries a haunting literalness in Rwanda.

For the organizers and instigators of the Rwanda genocide, getting away with murder is precisely what the international community wants to help prevent by way of the International Tribunal. Murder, let alone genocide, has to be punished for a sense of right, a sense of law and order, to be restored in a society that has seen all norms of life shattered.

Justice is one thing; reconciliation, however, is another. The Tribunal might become a vehicle of justice, but it is hardly designed as a vehicle of reconciliation. Justice treats criminals whether or not they see the error of their ways; but reconciliation is much more complicated, and it is certainly impossible until and unless the criminals repent and show remorse. Only then can they even beg their victims for forgiveness, and only then can reconciliation possibly be attained.

In this context it is important to note that we have seen few if any signs of remorse and repentance — let alone apology — from those responsible for the genocide. The very opposite is more likely the case. Even while we are creating a mechanism for trying these criminals, most of them are in the safe havens of refugee camps in Zaire and Tanzania. From the relative safety of those camps they continue to spew hatred against the Rwandan authorities — against, in reality, their intended victims who got away. They preach hatred, operate incendiary radio stations, keep an iron hold over the rest of the camp population, prevent ordinary people from going back to their homes and farms, throttle efforts of humanitarian operations — indeed, they are possibly preparing for a renewal of the war.

This is a travesty of historical justice: namely, that hundreds of thousands of Rwandese should today be at the mercy of their own tribesmen, at the mercy of what used to be the Presidential Guard, what used to be the Rwandese Government Army, what still probably is the *interahamwe* militia, what used to be Radio Mille Collines. It is a travesty that the criminals should so far have managed not only to get away with murder, but to drag along ten times as many wretched refugees, whom they now use as a human shield and camouflage.

Creating the tribunal is just another of several partial tasks of the international community. In the view of my delegation, it is even an easier, more straightforward task. But the really urgent task is that of getting into the camps of Goma and Bukavu, Munigi and Mugunga, Kibumba and Katale and Ndosha, and in the border regions of Tanzania, to separate the predators from the prey, the wolves from the sheep — which is a precondition for even beginning to deal with the wolves. Letting the refugees make their own decisions, permitting humanitarian organizations free access to them, and neutralizing the wolves is the international community's first and foremost responsibility. And once they are neutralized, by all means let them be duly tried and punished.

Ms. Cañas (Argentina) *(interpretation from Spanish)*: The Republic of Argentina co-sponsored the draft resolution that the Security Council has just adopted because it considers that the establishment of an International Criminal Tribunal for Rwanda is a political and legal instrument that can have a positive impact, not only in Rwanda, but also in the rest of the international community.

We consider that this Tribunal will contribute to the process of reconciliation in Rwanda since, on the one hand, it shows the people, both the victims and those responsible, that justice exists, and, on the other hand, that justice will be applied with impartiality and independence.

For the world, the establishment of the Tribunal is a clear message that the international community is not prepared to leave unpunished the grave crimes committed in Rwanda. Given the various reports on broad, systematic and flagrant violations of international humanitarian law, including genocide, committed in Rwanda in the territory of neighbouring States and by Rwandese citizens, the international community could not remain silent and inactive.

The establishment of this ad hoc Tribunal by the Council responds to the specific circumstances being confronted by Rwanda, and it is the result of a specific request made by the Rwandese Government for rapid and effective action in this direction to contribute to reconciliation and reconstruction and to the maintenance of peace in Rwanda.

It is clear that, this Tribunal having been set up as an ad hoc organ, it is not authorized to establish rules of international law or to legislate as regards such law but, rather, it is to apply existing international law.

I should like to point out that for my Government, a standing international tribunal, in order to be established as legitimate and effective, should be the result of a treaty agreed among sovereign States. We are satisfied to see that the guidelines contained in the Statute of the international penal Tribunal approved by the resolution that we have just adopted can adequately ensure due legitimacy and transparency for the decisions of the Tribunal, as well as the human rights and fundamental freedoms of those accused.

My Government attaches the utmost importance to the appropriate functioning of this Tribunal, whose work will involve the prosecution of those persons individually responsible for the violations of international humanitarian law as set out in articles 2, 3 and 4 of the Statute.

We would have preferred a tribunal with its own appeals chamber and prosecutor, but we understand the reasons why the present solution was accepted, and we are pleased to see that it has been provided that an additional Deputy Prosecutor will be appointed for the specific situation of Rwanda.

As regards the seat of the Tribunal, the Council should take its decision having regard to considerations of justice and fairness, as well as administrative efficiency, including access to witnesses. The appropriateness of having an office established in Rwanda where necessary should also be considered, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions.

We believe that the Judges and the Deputy Prosecutor should be appointed as soon as possible, so that the Tribunal will be able to begin its work without delay and to produce the desired results. In the specific case of Rwanda, we believe that those to be appointed should, in the main, come from continental legal systems.

Mr. Sardenberg (Brazil): The unprecedented tragedy in Rwanda has appalled the entire international community. The dastardly criminal events, the consequences of which were relayed to the whole world through the media, are still very much present in our minds. The tragic results are well known: hundreds of thousands of innocent people killed, millions of others internally displaced or forced to cross the borders, seeking refuge in neighbouring countries. The whole nation was laid to waste. The task of recovery is daunting, and an enormous challenge lies ahead.

Last month, the members of the Security Council had the privilege of meeting President Bizimungu, whose leadership is clearly required to help solve the extremely complex situation in his country. He briefed us on the recent developments in Rwanda, and shared with us his plans for his Government and his expectations on how the international community could contribute to the challenging task of reconstructing an entire country.

He showed particular concern for the need to make Rwandese in refugee camps, or internally displaced in the country, realize that the return to their homes was not

only highly desirable, but also could be achieved in safety. The struggle against impunity was presented as a key area for confidence-building in Rwanda.

In this context, we listened to his plea for international cooperation in the judiciary area, including the establishment of an international tribunal, as the expression of his Government's wish to end a state of lawlessness and of its resolve not to tolerate any breach of humanitarian law or any crime against humanity.

Brazil has repeatedly made clear its unequivocal condemnation of genocide and other serious violations of international humanitarian law committed in Rwanda. The perpetrators of such abhorrent crimes must be promptly and properly brought to justice and, once proven guilty, receive adequate punishment.

From the outset, my delegation considered that careful examination should be given to the possibility of establishing an international tribunal, as recommended by the Commission of Experts and explicitly requested by the President of Rwanda.

When this possibility was first taken up by the Council, my delegation made it clear that a number of relevant questions should be looked into prior to a decision being taken. In particular, we pointed out that previous experience, namely, the creation of the International Tribunal for war crimes in the former Yugoslavia, might not necessarily provide the adequate response required by the specific circumstances in Rwanda.

As we stated in the case of the Tribunal for the former Yugoslavia, Brazil is not convinced that the competence to establish and/or to exercise an international criminal jurisdiction is among the constitutional powers of the Security Council; or that the option of resorting to a resolution of the Security Council is the most appropriate method for such a purpose.

The authority of the Security Council is not self-constituted. It originates from the delegation of powers conferred upon it by the whole membership of the Organization under Article 24 (1) of the Charter. For that very reason, the Council's powers and responsibilities under the Charter should be strictly construed, and cannot be created, recreated or reinterpreted by decisions of the Council itself.

Our preferred method for the creation of an international criminal tribunal has been and remains the conclusion of a convention by the international community clearly setting up the tribunal's jurisdiction and terms of reference. The establishment of such a tribunal must be based upon a careful and comprehensive examination of all the complex political, legal and judicial elements involved. In particular, it should be underscored that the assertion and the exercise of criminal jurisdiction are essential attributes of national statehood. Therefore, such jurisdiction cannot normally be presumed to exist at the international level without the participation and consent of the competent parties.

We voted in favour of the creation of the Tribunal on the former Yugoslavia because of the exceptionally serious circumstances of the situation. The position we then took was to be seen as a political expression of our condemnation of the atrocities being committed in that region. Our position remains the same today. Likewise, in the case of Rwanda we would have preferred that an initiative of this nature received a much deeper and more thorough examination, with the appropriate participation of the broad membership of the United Nations. Brazil does not favour, as a matter of principle, resort to judicial or institutional measures of immediate effectiveness, to the detriment of solutions founded on a solid legal basis.

Exceptional ad hoc initiatives by the Council may not be the best way to promote the consistent, balanced and effective application of international humanitarian law or to create an environment conducive to the enhancement of the rule of law in international public order. The Security Council's responsibilities lie not in the judicial or institution-building field, but in the maintenance of international peace and security. Therefore, the invocation of Chapter VII of the Charter for the purpose of establishing an international tribunal goes, in our view, beyond the competence of the Council as clearly defined in the Charter.

The setting up of an international judicial body should be a matter for thorough discussion and negotiation by the international community, as in the case of the proposed international criminal court of justice currently under discussion in the International Law Commission and in the Sixth Committee of the General Assembly. In addition, the Statute of the International Tribunal for Rwanda should have been the object of comprehensive, in-depth legal deliberations specifically focused on the circumstances of Rwanda, and should at least have been reviewed by a panel of jurists representative of the main legal systems. Moreover, since

genocide is one of the most serious crimes that is to be tried by the Tribunal, the principle set out in article VI of the Convention on the Prevention and Punishment of the Crime of Genocide, which stipulates that the jurisdiction of an international penal tribunal must be accepted by the party concerned, should have been observed.

Among the important lacunae in the Statute of the Tribunal, I would point out its failure to address adequately the sensitive question of concurrence of jurisdiction between the International Tribunal and the local courts. The sheer number and diversity of the cases to be brought for trial, and the differences between international and domestic criminal laws, could render the establishment of respective competences an operationally difficult task, and could impair the future functioning of the International Tribunal.

We also regret the absence of a clear date for the termination of the activities of the Tribunal, which will presumably have to function for a very long time. Decisions on its seat and Appeals Chamber, as well as the appointment of its Prosecutor, should have taken into consideration the specific requirements of the case of Rwanda. Moreover, for the work of the International Tribunal to be effective, it will be essential that it receive the fullest cooperation from all States, including the handing over of suspects to the judicial authority. Nevertheless, in this regard States may have to observe the constitutional competence of their own domestic courts in matters such as extradition.

These are just some of the many legal issues that more thorough and comprehensive deliberations could have brought to a more satisfying result.

As in the case of the establishment of the Tribunal for the former Yugoslavia, I wish to stress that our vote on the establishment of the International Tribunal for Rwanda should not be construed as an overall endorsement of the procedural or substantive elements involved. To our mind, neither of these instances establishes any legal precedent for the future. It is only in the light of the exceptional and extremely serious circumstances, and of the urgency required by the situation in Rwanda, that we agreed to proceed with the establishment of the International Tribunal.

Our foremost concern remains the urgent need to bring to justice those responsible for the series of heinous massacres. That being the overriding purpose of the International Tribunal, Brazil voted in favour of its establishment while qualifying our support with the serious reservations, both procedural and substantive, that I have clearly enunciated.

Mr. Marker (Pakistan): The Security Council has just adopted another landmark resolution clearly establishing that gross and systematic violations of international humanitarian law constitute a threat to international peace and security, a position firmly held by the Government of Pakistan.

The Government of Rwanda displayed great statesmanship when it offered to have those responsible for serious violations of international humanitarian law committed on Rwandese territory prosecuted by an international tribunal. It is our hope that the International Tribunal established by resolution 955 (1994) will become fully functional in the shortest possible period of time. In view of what transpired in Rwanda, especially between April and July 1994, it is absolutely essential that the Tribunal should start its work as soon as possible.

While the assistance of the international community will be required for the Tribunal to commence its work, what is even more necessary is the cooperation of all segments of Rwandese society, particularly the Government of Rwanda. We share the belief that the smooth and expeditious functioning of the Tribunal would, apart from dispensing justice, help in the attainment of the larger objective of national reconciliation and in restoring confidence in all sections of the Rwandese polity.

The negotiations in the Security Council on finalization of the draft resolution and the Statute of the Tribunal were long and arduous. It is really regrettable that sufficient common ground could not be found between the sponsors of the draft resolution and the Government of Rwanda. Ideally, it would have been our preference to have such an important resolution adopted by a unanimous vote. We take consolation from the fact that all sides concerned made sincere efforts to reach consensus. Regrettably, however, points of difference still persist.

As regards the question of the seat of the Tribunal, we fully subscribe to the criteria outlined in paragraph 6 of the resolution. In our view, the best location for the Tribunal's work would be Kigali, provided that all the necessary arrangements could be made for its efficient functioning there. The Council should look for other

alternatives only if it is determined that locating the Tribunal in Kigali would detract from an efficient and fair exercise of its functions.

In that context, the decision to establish an office of the Tribunal in Rwanda is a step in the right direction.

Mr. Li Zhaoxing (China) (*interpretation from Chinese*): China has followed closely the development of the situation in Rwanda and sympathizes deeply with the people of Rwanda in their suffering. We are strongly opposed to and condemn all crimes in violation of international humanitarian law, including acts of genocide. China is in favour of bringing to justice those responsible for such crimes.

The establishment of an international tribunal for the prosecution of those who are responsible for crimes that gravely violate international humanitarian law is a special measure taken by the international community to handle certain special problems. It is only a supplement to domestic criminal jurisdiction and the current exercise of universal jurisdiction over certain international crimes.

At present people still have doubts and worries about the way in which an international tribunal is established by a Security Council resolution under Chapter VII of the United Nations Charter, and careful studies are still being carried out. In principle, China is not in favour of invoking at will Chapter VII of the Charter to establish an international tribunal through the adoption of a Security Council resolution. That position, which we stated in the Council last year during the deliberations on the establishment of an International Tribunal for the Former Yugoslavia, remains unchanged.

It was for the purpose of upholding justice and bringing to justice as soon as possible those who are responsible for crimes that seriously violate international humanitarian law — and especially on the basis of the urgent desire of the Government of Rwanda, the current unique circumstances in that country and the strong demand of the African countries and the international community — that China was originally prepared to give positive consideration to the Security Council draft resolution and the draft statute on the establishment of the International Tribunal for Rwanda.

In view of the purposes and objectives of the ad hoc International Tribunal, the Rwanda Government's attitude and position on the establishment of such a Tribunal for Rwanda are of vital importance. In order to make sure that this Tribunal will effectively punish those who are responsible for crimes, full cooperation from the Rwanda Government is required after the establishment of the Tribunal. Without such cooperation and support from the Rwanda Government, it will be difficult for the Tribunal to perform its duties in an effective manner. We have noted that, though the Security Council has made certain efforts to allay the Rwanda Government's concern with respect to the establishment of the Tribunal, the Rwanda Government still holds that there exist too many difficulties in the resolution and the statute for it to cooperate in a satisfactory manner with the international community in bringing to justice those who are responsible for crimes that seriously violate international humanitarian law. The Rwanda Government has expressed its desire for further consultations. This request, in our view, should be taken into consideration.

Since this is an extremely important and sensitive issue involving many complicated elements, it is necessary for the Security Council to adopt a prudent attitude. It is therefore an incautious act to vote in a hurry on a draft resolution and statute that the Rwanda Government still finds difficult to accept, and it is also hard to tell what impact this may have on relevant efforts in future. Therefore, the Chinese delegation cannot but express its regret and has abstained in the vote.

Mr. Yáñez-Barnuevo (Spain) (*interpretation from Spanish*): The Security Council has just acted on the basis of the preliminary report of the Commission of Experts established under resolution 935 (1994), which recommends that the Security Council adopt necessary and effective measures to ensure that those responsible for the grave violations of human rights committed in Rwanda during the armed conflict be tried by an independent and impartial international criminal tribunal.

From the beginning of its investigation, the Commission of Experts found overwhelming evidence that acts of genocide and other grave violations of international humanitarian law had been committed in Rwanda, particularly between April and July of this year. The report says the violations were committed systematically, methodically, treacherously and with premeditation. The Commission of Experts estimates that the number of persons murdered exceeds half a million.

The international community could not remain indifferent in the face of those deeds. It is not only the Rwandese people that is affected by such grave violations of human rights and the fundamental values of mankind,

but the entire international community. This is why, for the second time in its history, the Security Council, acting under Chapter VII of the Charter, has established a jurisdictional organ with a specific competence but also with broad powers to hand down judgments in these very serious cases.

While there has been unanimity in the Council on the need for the establishment of an International Tribunal for Rwanda, there have also been some differences of opinion between the members of the Council with regard to the Tribunal's Statute, which has required intensive consultations and negotiations. But the fact is that today the Tribunal has been established, and we are certain that its organizational and functional implementation will be carried out with all necessary speed.

From the very beginning Spain supported the resolutions the Security Council adopted for the establishment of the Tribunal for the former Yugoslavia, and in the case of Rwanda our support has also been faithful and constructive, starting from the very beginning, with the initiative that led to the adoption of resolution 935 (1994), under which the Commission of Experts was established, to the latest stage. Spain was among those countries that submitted to the Commission of Experts all the relevant documentation available to them in connection with the events in Rwanda. More recently the Government of Spain sent two forensic physicians and two expert investigators specializing in scientific police work to Rwanda in support of the work of the Commission of Experts. All this shows that Spain, in response to the appeal made by the Security Council, the Secretary-General and the United Nations High Commissioner for Human Rights, has actively supported the Commission's work. By the same token, as a sponsor of the resolution just adopted, we and the other sponsors have striven to respond to the needs and observations of the other members of the Council, particularly those of the delegation of Rwanda.

Just as in the case of the Tribunal for the former Yugoslavia, we believe that the independence of the International Tribunal for Rwanda is its most important attribute: independence *vis-à-vis* Governments, independence *vis-à-vis* national tribunals and even independence *vis-à-vis* the United Nations itself. Furthermore, although the new Tribunal will share with the Tribunal for the former Yugoslavia certain aspects of personnel, materials and means of operation, the Tribunal for Rwanda will have legal independence. It is a separate Tribunal with its own Statute, its own sphere of jurisdiction and its own rules of operation.

We have also been concerned about legal guarantees to safeguard the rights of the accused, together with the formulation of legal principles that are essential in establishing criminal law. We feel that the Statute meets such concerns. We believe that, in addition to investigating the facts and punishing the guilty, the Tribunal will make its biggest contribution by helping to restore the rule of law in Rwanda and by serving the purposes of justice and reconciliation between all the Rwandese.

It should also be borne in mind that the inevitable financial implications of the work of the Tribunal that the Council has just established will be less than those of an entirely new body, as it can benefit from a large part of the structure, personnel and services of the Tribunal for the former Yugoslavia. This is no obstacle to the new Tribunal's opening an office and conducting proceedings on Rwandese territory, in accordance with the principle of proximity to the scene, so important in the penal process.

It is important to point out that the Tribunal's effectiveness — even more than in the case of other Council decisions — will depend in the final analysis on the support, cooperation and encouragement given to it by States. The entire international community, all the Members of the United Nations, will have to support the Tribunal in its work. This is Spain's understanding of its own duty.

We also hope that, although the delegation of Rwanda was unable to vote in favour of the resolution, the Rwandese authorities will provide all necessary cooperation in the work of the Tribunal, in keeping with their request for its establishment. In any event, we are confident that the international community as a whole will cooperate, not only in the work of the International Criminal Tribunal for Rwanda, but also in the administration of justice and with the Rwandese national tribunals, to ensure that justice is done and that normality is restored to the country.

The decision taken today with the adoption of resolution 955 (1994) is within the authority conferred by the Charter of the United Nations upon the Security Council to act in cases of threats to peace. None the less, the establishment of this institution — as in the case of the earlier institution relating to the former Yugoslavia — should in no way cut off the international community's access to the path towards the establishment of a universal criminal jurisdiction. Case-by-case solutions

may be adequate for reasons of urgency, but a general institution would provide a better solution to specific problems. By setting an example, it could also be effective by preventing a recurrence of such atrocious acts. Spain therefore resolutely supports the work currently being done by the General Assembly, on the basis of a draft statute prepared by the International Law Commission, with a view to the establishment of a permanent international criminal court with general jurisdiction.

Mr. Gambari (Nigeria): For my delegation, the issue at stake here is the need to punish collectively criminal acts against humanity; the issue is not the geographical location or the political complexion of the alleged criminals. Therefore, Nigeria welcomes the fact that the Security Council was able this afternoon to approve the resolution and its annexed statute, which establish an International Tribunal for the sole purpose of prosecuting persons responsible for acts of genocide and other serious violations of international humanitarian law committed, in this case, in the territory of Rwanda in the aftermath of the events of 6 April 1994.

We regret, of course, that, despite the efforts of the sponsors of the resolution and of my own delegation aimed at promoting the resolution's adoption by consensus, Rwanda was unable to support it. My delegation is, however, pleased to observe that the new Government of Rwanda has declared its readiness to cooperate and work with the International Tribunal in an effort to restore confidence and to establish justice in the country. This is as it should be for a Government that has pledged itself to work for national reconciliation after the trauma that the people of Rwanda have experienced as a result of the tragic civil war.

It is our understanding that the International Tribunal for Rwanda is designed not to replace, but to complement, the sovereignty of Rwanda. The international and impartial character of the Tribunal will, in our view, enhance the prospects of national reconciliation in Rwanda. Justice and fairness will also be the cornerstones of the Tribunal. This is why we believe that the conduct of the trials in Rwanda, where we hope and expect the seat of the International Tribunal will be located, will be of benefit not only for the development of confidence among Rwanda's citizens, but also to the judicial system in the country, which, in the circumstances, sorely needs international assistance and support.

However, the establishment of an international tribunal is without prejudice to the setting up by the Government of Rwanda of a national tribunal that it may wish to establish to address issues concurrently on the basis of national perspectives and interest.

We recognize, however, that many of those likely to be brought before the Tribunal may, in fact, reside outside Rwanda. We therefore hope that countries harbouring suspects will cooperate fully with the International Tribunal so that the purpose of justice will be served.

It should be pointed out, in conclusion, that the decision to establish the International Tribunal is but the first step in the long process of bringing justice to a country that has been traumatized by ethnic hatred and a tragic civil war. My delegation therefore joins in appealing for the cooperation of all States, not only by taking measures necessary under their domestic law to implement the provisions of the present resolution and statute, but also, in conjunction with intergovernmental and non-governmental organizations, by contributing the necessary financial resources, equipment and expert personnel to enable the Tribunal to function effectively and expeditiously.

We are confident that the international community, which did not neglect Rwanda in its most difficult period, will continue to assist the people of Rwanda in their determined efforts to rebuild their country.

Mr. Bakuramutsa (Rwanda) (*interpretation from French*): My delegation wishes to express special thanks to the United States and New Zealand for the leading role they played in the elaboration of the draft resolution and the draft statute of the International Tribunal for Rwanda. We also thank the United Kingdom, Spain, France and other countries for subsequently joining in the efforts of the United States and New Zealand. We also thank the Council's President for the month of October and you, Madam President, for the patience you both displayed towards the working group on the International Tribunal for Rwanda and for keeping this question on the agenda during October and November. Through you, Madam President, I thank all the members of the Security Council.

Since 1959 Rwanda has repeatedly experienced collective massacres, which, as early as 1964, were described by Pope Paul VI and two Nobel Prize winners — Bertrand Russell and Jean-Paul Sartre — as the most atrocious acts of genocide this century after that of the Jews during the Second World War. But whenever

such tragedies occurred the world kept silent and acted as though it did not understand that there was a grave problem of the violation of human rights.

Unfortunately, the perpetrators of these crimes were never brought to justice for their acts. The recent genocide in Rwanda, which awakened, shocked and saddened the universal conscience, is the direct result of this culture of impunity.

When the genocide began, the international community, which had troops in Rwanda and could have saved hundreds of thousands of human lives by, for example, establishing humanitarian safe zones, decided instead to withdraw its troops from Rwanda and to abandon the victims to their butchers.

The Rwandese Patriotic Front had to fight alone from April to July in order to stop the carnage. It is estimated that of the 7.5 million who lived in Rwanda over 1 million perished in the course of this genocide. On the same scale, in a country the size of the United States this would be equivalent to the loss of over 37 million Americans in under three months.

After rendering harmless the perpetrators of the genocide, the Rwandese endeavoured to implement the Arusha Peace Agreement, whose objective is the creation of a state of law, the establishment of a broad-based Government, the repatriation of refugees and the establishment of a national army.

But it is impossible to build a state of law and arrive at true national reconciliation if we do not eradicate the culture of impunity which has characterized our society since 1959. The Rwandese who were taught that it was acceptable to kill as long as the victim was from a different ethnic group or from an opposition party, cannot arrive at national reconciliation unless they learn new values. The national reconciliation of the Rwandese can be achieved only if equitable justice is established and if the survivors are assured that what has happened will never happen again.

Everyone will recall that barely a month ago His Excellency Mr. Pasteur Bizimungu, the President of Rwanda, said in his address to the General Assembly that

> "it is absolutely urgent that this international tribunal be established". (*Official Records of the General Assembly, Forty-ninth Session, Plenary Meetings, 21st meeting, p. 5*).

He repeated this request to the Council. This shows just how much the Rwandese Government wanted an international jurisdiction in order to bring to trial the perpetrators of the crime of genocide.

There are a number of reasons why the Rwandese Government requested the establishment of an international tribunal.

First, by asking for the establishment of such a tribunal, the Rwandese Government wanted to involve the international community, which was also harmed by the genocide and by the grave and massive violations of international humanitarian law, and it wanted to enhance the exemplary nature of a justice that would be seen to be completely neutral and fair.

Secondly, the Government appealed for an international presence in order to avoid any suspicion of its wanting to organize speedy, vengeful justice.

Thirdly, the Rwandese Government requested and firmly supports the establishment of an international tribunal to make it easier to get at those criminals who have found refuge in foreign countries.

Fourthly, the genocide committed in Rwanda is a crime against humankind and should be suppressed by the international community as a whole.

The Tribunal will help national reconciliation and the construction of a new society based on social justice and respect for the fundamental rights of the human person, all of which will be possible only if those responsible for the Rwandese tragedy are brought to justice.

In spite of many meetings with the sponsors of the draft resolution, and despite some amendments to the initial text, my Government is still not satisfied with the resolution or with the statute of the International Tribunal for Rwanda as it stands today, for the following reasons.

First, my delegation regards the dates set for the *ratione temporis* competence of the International Tribunal for Rwanda from 1 January 1994 to 31 December 1994 as inadequate. In fact, the genocide the world witnessed in April 1994 was the result of a long period of planning during which pilot projects for extermination were successfully tested.

For example, there were the extermination of a sub-group of Tutsis, the Bahimas, in Mutara in October 1990; the extermination of another Batutsi sub-group, the Bagogwes, in the region of Gisenyi and Ruhengeri, in January and February of 1991; the massacre of over 300 Batutsi in Bugesera in March 1992; and the massacre of more than 400 other Batutsi in Gisenyi, in January 1993. We must also note the arbitrary arrests of over 8,000 Batutsi in October 1990, arrests accompanied by torture, rape and other degrading treatment. Hundreds of Batutsi died as a result.

The international community, through its diplomatic representatives and international organizations in Kigali, as well as many reports by human rights organizations, was well aware of these massacres and cannot claim that it became cognizant of the situation only in the wake of the tragedy of April 1994. It had already been recognized by the Special Rapporteur of the United Nations, Mr. Ndiaye, in May 1993 and in the March 1993 report of the international commission that genocide had in fact occurred in Rwanda.

The statement by the late President Habyarimana of 15 November 1992 at Ruhengeri and that made by his adviser, Dr. Léon Mugesera, on 26 November 1992 revealed as early as those dates, and unequivocally, the existence of a plan that they called the final solution, Rwandese-style. Furthermore, crimes do not exist simply because one is aware of them; they exist only by the fact that they have been committed. My delegation proposed that account be taken of the period from 1 October 1990, the beginning of the war, to 17 July 1994, the end of the war. This proposal was rejected without any valid reason.

An international tribunal which refuses to consider the causes of the genocide in Rwanda and its planning, and that refuses to consider the pilot projects that preceded the major genocide of April 1994, cannot be of any use to Rwanda, because it will not contribute to eradicating the culture of impunity or creating a climate conducive to national reconciliation. In this respect, there is a contradiction between articles 6 and 7 of the statute.

Secondly, my delegation finds that the composition and structure of the International Tribunal for Rwanda inappropriate and ineffective. The Tribunal is composed of two Trial Chambers, with three judges in each. The Appeals Chamber is shared by the Tribunal for the Former Yugoslavia and the Tribunal for Rwanda and will have only five judges. The two Tribunals will also share the same prosecutor, it being understood that for Rwanda he or she will be backed by a deputy prosecutor.

Given the magnitude of the task awaiting the staff of the Tribunal and the need for speedy and exemplary action by the tribunal, my delegation asked that the number of Trial Chamber judges be increased and that the International Tribunal for Rwanda be given its own Appeals Chamber and prosecutor. No well-founded reply was given. Some information was provided this morning, but it was too little, too late.

My delegation considers that the establishment of so ineffective an international tribunal would only appease the conscience of the international community rather than respond to the expectations of the Rwandese people and of the victims of genocide in particular.

Thirdly, in view of all this, my delegation was surprised to see in the draft statute that the International Tribunal, instead of devoting its meagre human resources, and probably equally meagre financial ones, to trying the crime of crimes, genocide, intends to disperse its energy by prosecuting crimes that come under the jurisdiction of internal tribunals. Furthermore, nothing in the draft resolution and statute indicates the order of priority for crimes considered by the Tribunal. In these conditions, nothing could prevent the Tribunal from devoting its resources on a priority basis to prosecuting crimes of plunder, corporal punishment or the intention to commit such crimes, while relegating to a secondary level the genocide that brought about its establishment.

Fourthly, certain countries, which need not be named here, took a very active part in the civil war in Rwanda. My Government hopes that everyone will understand its concern at seeing those countries propose candidates for judges and participate in their election.

The fifth reason is that my delegation finds it hard to accept that the draft statute of the International Tribunal proposes that those condemned be imprisoned outside Rwanda and that those countries be given the authority to reach decisions about the detainees. This is for the International Tribunal or at least for the Rwandese people to decide.

My delegation would like to recall that in the month of September the United States circulated to the Security Council a draft resolution aimed at recommending and authorizing States Members of the United Nations that are harbouring known Rwandese criminals to arrest them

and to place them in preventive detention. That draft resolution was nipped in the bud by those countries that did not want to see it applied. The fate of that draft resolution clearly shows to anyone who might have any doubts about it that there were countries in the world that would be inclined to let the perpetrators of the genocide go free and there can be no doubt that it would be those very countries that would rush to have in their prisons those Rwandese that are condemned by the International Tribunal.

The sixth reason is that the International Tribunal as designed in the resolution, establishes a disparity in sentences since it rules out capital punishment, which is nevertheless provided for in the Rwandese penal code. Since it is foreseeable that the Tribunal will be dealing with suspects who devised, planned and organized the genocide, these may escape capital punishment whereas those who simply carried out their plans would be subjected to the harshness of this sentence. That situation is not conducive to national reconciliation in Rwanda.

The seventh reason is that my Government called for the establishment of an international tribunal to prosecute those guilty of genocide because the international community is deeply concerned in this respect, but also and above all we requested the establishment of this Tribunal to teach the Rwandese people a lesson, to fight against the impunity to which it had become accustomed since 1959 and to promote national reconciliation. It therefore seems clear that the seat of the International Tribunal should be set in Rwanda; it will have to deal with Rwandese suspects, responsible for crimes committed in Rwanda against the Rwandese. Only in this way can the desired effects be achieved. Furthermore, establishing the seat of the Tribunal on Rwandese soil would promote the harmonization of international and national jurisprudence. My delegation was surprised to see that the authors of the draft still hesitate to indicate where the future seat of the Tribunal will be.

The changes proposed by the Rwandese Government, with all good will, could very well have been accommodated by international law and do not run counter to the idea of international jurisdiction. My Government still believes that an international tribunal for Rwanda, taking into account Rwandese realities, is possible and feasible.

Although Rwanda wants and believes in an international tribunal for Rwanda, and although the Government of Rwanda is convinced that such a tribunal could be organized taking into account the concerns of the Rwandese people without impairing its international nature and its independence, my Government decided to vote against the draft resolution.

Mr. Al-Khussaiby (Oman): The tragic events that befell Rwanda early this year truly shocked and horrified the international community because of the large scale of the killings, massacres and the act of genocide which accompanied the military confrontation, resulting in an estimated death toll of thousands of people, mostly innocent civilians. However, my delegation notes with great pleasure and satisfaction that the killings have abated and the situation in Rwanda is now characterized by a relative calm and is moving gradually towards peace and normalcy, which the people of Rwanda richly deserve after what they have gone through.

Three months ago my delegation voted in favour of Security Council resolution 935 (1994) by which the Council established a Commission of Experts to examine and analyse the information pertaining to the serious violations of international humanitarian law in Rwanda, including evidence of possible acts of genocide. Today we have again voted in favour of the resolution just adopted on the establishment of the International Tribunal for the purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law in Rwanda. This resolution is a follow-up of the process that the Council initiated by the adoption of resolution 935 (1994) in July 1994.

Our support for Security Council resolution 935 (1994) and the resolution just adopted stems from our conviction of the vital importance of bringing to justice all those who have orchestrated and perpetrated these horrible acts. We deem this necessary for the achievement of national reconciliation, the creation of an environment conducive to the peaceful and orderly return of refugees and the eradication of the tradition of impunity, which is one of the main reasons for the violation of the right to life in Rwanda. Furthermore, the establishment of the International Tribunal for Rwanda would also be instrumental in affording the accused, or the suspects themselves, a fair and equitable trial in accordance with the rule of law instead of leaving them completely to the mercy of the justice of the victorious.

Under no circumstances can this Tribunal be considered as a legal instrument for revenge for acts of genocide, serious crimes or any other crimes. In this connection we would like to commend the efforts of the Government of Rwanda aimed at achieving national reconciliation, promoting tolerance and understanding,

and mitigating the ethnic differences among the Rwandese people, as well as its efforts in encouraging the safe return of the refugees and rebuilding the country's infrastructure destroyed by the war. We believe that the establishment of the International Tribunal will contribute considerably towards realizing those objectives set out both by the international community and the Rwandan Government. We appeal to the Rwandan Government to cooperate fully with the Tribunal.

We welcome in particular the efforts aimed at making the new Government more comprehensive through the invitation to some elements of the former regime whose hands have not been tainted with blood, to participate in the Government and the new army. We deem this a necessary step for the realization of political stability within the framework of the Arusha Peace Agreement.

Finally, on behalf of my delegation I should like to pay tribute to the Commission of Experts for its commendable efforts in discharging the mandate and responsibilities entrusted to it. We also applaud the efforts of the Secretary-General of the United Nations, affiliated agencies and other non-governmental organizations for their efforts aimed at alleviating the suffering of the Rwandese people. We also pay a special tribute to the neighbouring countries, in particular Burundi, Uganda, Tanzania and Zaire, for their untiring efforts and consideration in trying to alleviate the sufferings of the people of Rwanda. We urge them to continue their tireless and heroic efforts in this regard.

The President: I shall now make a statement in my capacity as the representative of the United States of America.

Genocide occurred in Rwanda last spring. Other grave violations of international humanitarian law also have ravaged that State. This Council has been seized with these horrific events through much of this year. The Council itself has not been immune from criticism. But today marks the culmination of months of very hard and persistent work by our respective Governments, the Secretariat, the Commission of Experts and this Council to create a new ad hoc tribunal for the investigation and prosecution of genocide, crimes against humanity and war crimes in Rwanda and by Rwandan citizens in States neighbouring Rwanda.

We regret that the Government of Rwanda cast its vote against the resolution. As other members of the Council have stated, the sponsors worked hard to accommodate a number of Rwandan concerns. We were not able to accommodate them all. While we understand their concerns regarding several key issues — indeed, on the death penalty we might even agree — it was simply not possible to meet those concerns and still maintain broad support in the Council. Therefore, my Government believes that the right choice is to establish the Tribunal this tragedy demands rather than wait to achieve an agreement that would never come.

Nonetheless, we urge the Government of Rwanda to honour its obligation to cooperate fully with the International Tribunal and the investigation it must undertake in order to prosecute those guilty of the unspeakable acts of genocide and other atrocities. We appreciate the efforts of the United Nations Legal Counsel, Hans Corell, to consult with the Government of Rwanda in Kigali about this resolution and the statute for the Tribunal. Over the past few months, this Council has acted with determination to establish the Tribunal at the earliest possible date.

The Prosecutor will need to work very closely with the Government of Rwanda to establish a presence in that country and to operate freely in his investigations and prosecutions. My Government fully supports the establishment of a Tribunal office in Kigali and agrees that a great deal of the Tribunal's work should necessarily proceed in Rwanda. We also look forward to further consultations on the official seat of the Tribunal. It is imperative that the Tribunal operate efficiently, securely and in a manner consistent with the overall development of international humanitarian law. We will look forward to the views of the Secretary-General and the Prosecutor in our evaluation.

As Chief Prosecutor, Justice Goldstone will bring to this endeavour the same integrity and skill that he has already infused into the International Tribunal for the former Yugoslavia. We look forward to assisting Justice Goldstone in whatever way we can to facilitate his work on Rwanda. We also look forward to the selection of a deputy prosecutor for Rwanda who will have major responsibility for investigations and prosecution.

The establishment of the International Tribunal for Rwanda is only the beginning. One major challenge ahead of us is finding adequate funding for the Tribunal. We urge all Member States to make voluntary contributions. More importantly, the United Nations must provide sufficient funds for these early critical months of the Tribunal's work. We stress, however, that with the

growing budgetary needs of the International Tribunal for the former Yugoslavia, our challenge will be to finance both ad hoc Tribunals with enough resources to get the job done.

The judicial system in Rwanda also will require much rebuilding in order to take on the enormous task of daily law enforcement, as well as the prosecution of many of the suspects whom the Tribunal will not be able to handle. My Government is prepared to assist Rwanda in this important task and we encourage other Governments to provide assistance.

The investigation of genocide is indeed very grim work, but we have a responsibility to see that the International Tribunal for Rwanda can accomplish its objective — one that this Council increasingly recognizes: to hold individuals accountable for their violations of international humanitarian law. As evident in the former Yugoslavia, in Rwanda there is an equal need to forge harmony among ethnic groups by bringing to justice the individuals who committed such heinous crimes, regardless of their position in society.

In closing, let me express my Government's hope that the step we have taken here today can promote both justice and national reconciliation, lest the Rwandan people be unable to escape the memory of madness and barbarism they have just lived through.

I now resume my function as President of the Council.

There are no further speakers on the list of speakers. The Security Council has thus concluded the present stage of its consideration of the item on its agenda. The Security Council will remain seized of the matter.

The meeting rose at 5.15 p.m.